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April 9, 1998

HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Presentation

Federal-State Joint Board on Universal Service
Report to Congress

CC Docket No. 96-45

Dear Ms. Salas:

On April 8, 1998, on behalf of the National Cable Television Association, I provided the attached materials to Thomas Power, Legal Advisor to Chairman Kennard; James Casserly, Senior Legal Advisor to Commissioner Ness; Kevin Martin, Legal Advisor to Commissioner Furchtgott-Roth; Kyle Dixon, Legal Advisor to Commissioner Powell; and Paul Gallant, Legal Advisor to Commissioner Tristani. I also discussed the content of these materials with them.

Pursuant to sections 1.1206(b)(1) and (b)(2) of the Commission's rules, an original and one copy of this letter and the attached materials are being filed with the Office of the Secretary.

Sincerely,



Howard J. Symons

cc: Thomas Power
James Casserly
Kevin Martin
Kyle Dixon
Paul Gallant

AN INFORMATION SERVICE PROVIDER IS NOT A PROVIDER OF TELECOMMUNICATIONS

The legislative history of the 1996 Act suggests that an information service provider that builds its own network to distribute its own information service is not engaged in the provision of telecommunications.

The definition of “telecommunications service” in the Senate Commerce Committee-reported version of the 1996 Act contained a sentence stating that telecommunications service “includes the transmission . . . of information services and cable services, but does not include the offering of those services.” On the Senate floor, however, that sentence was deleted from the bill. Similar language in an early draft of the conference report was also removed. Thus, Congress specifically considered and rejected the idea of regulating the transmission of information services and cable services by the service provider separately from the offering of the services themselves.

Copies of the Senate Commerce Committee-passed language and a letter from Sen. Brown to Sen. Pressler addressing this issue are attached.

DCDOCS: 126439.1 (2pk701!.doc)

Calendar No. 45

104TH CONGRESS
1ST SESSION

S. 652

[Report No. 104-23]

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30 (legislative day, MARCH 27), 1995

Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, reported the following original bill; which was read twice and placed on the calendar

A BILL

To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 “(mm) ‘Telecommunications service’ means the offer-
2 ing of telecommunications for a fee directly to the public,
3 or to such classes of users as to be effectively available
4 to the public, regardless of the facilities used to transmit
5 the telecommunications service.

The term includes the
6 transmission, without change in the form or content, of
7 information services and cable services, but does not in-
8 clude the offering of those services.

9 “(nn) ‘Telecommunications carrier’ means any pro-
10 vider of telecommunications services, except that such
11 term does not include hotels, motels, hospitals, and other
12 aggregators of telecommunications services (as defined in
13 section 226). A telecommunications carrier shall be treat-
14 ed as a common carrier under this Act to the extent that
15 it is engaged in providing telecommunications services.

16 “(oo) ‘Telecommunications number portability’
17 means the ability of users of telecommunications services
18 to retain, at the same location, existing telecommuni-
19 cations numbers without impairment of quality, reliability,
20 or convenience when switching from one telecommuni-
21 cations carrier to another.

22 “(pp) ‘Information service’ means the offering of
23 services that—

24 “(1) employ computer processing applications
25 that act on the format, content, code, protocol, or

United States Senate

WASHINGTON, DC 20510-0804

December 15, 1995

Senator Larry Pressler
Chairman
Senate Commerce Committee

Dear Larry:

You may recall from last June when S. 652, the telecommunications bill, was on the floor that my staff discussed with your committee staff the definition of "telecommunications service." We were concerned that the provision of cable and information services would be regulated as a common carrier under the original language, contrary to Section 621c of the Communications Act. You addressed our concerns and removed this troubling language.

HR 1555, the House version of the telecommunications bill, went so far as to include a provision in their definition of "telecommunications service" that expressly exempted information services.

It has come to my attention the original language that I had asked be deleted may have been placed in the most recent conference draft definition of "telecommunications service." I wanted to bring this to your attention to again see if you could be helpful in removing this troubling provision.

Furthermore, so the intent of the definition can be clarified, report language expressly stating, "Telecommunications service does not mean the provision of cable service or an information service," would settle any ambiguity surrounding this definition.

Please advise me or David Miller of my staff at 224-8081 regarding this issue. Thank you for attending to this important matter.

Sincerely,



Hank Brown
United States Senate